

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DRAYVON CARMICHAEL,

Petitioner,

v.

ANTHONY J. ANNUCCI,

Respondent.¹

No. 20-CV-10622 (KMK) (PED)

ORDER ADOPTING REPORT &
RECOMMENDATION

KENNETH M. KARAS, United States District Judge:

Miguel Martinez (“Petitioner”) has filed a Petition for a Writ of Habeas Corpus (the “Petition”), pursuant to 28 U.S.C. § 2254, challenging his conviction and sentence from a jury trial in New York Supreme Court, Dutchess County. (*See generally* Pet. For Writ of Habeas Corpus (“Pet.”) (Dkt. No. 1).) On March 6, 2017, Petitioner was found guilty of first degree identity theft and two counts of second degree criminal possession of a forged instrument. (*See generally* Pet.) On appeal, the Appellate Division affirmed the judgment of conviction. *People v. Carmichael*, 99 N.Y.S.3d 340, 342 (App. Div. 2019). The New York Court of Appeals denied Petitioner leave to appeal. *People v. Carmichael*, 137 N.E.3d 21 (Table) (N.Y. 2019).

¹ At the time he filed this Action, Petitioner was in the custody of the New York State Department of Corrections and Community Supervision (“DOCCS”) and incarcerated at Gouverneur Correctional Facility. The DOCCS inmate locator website indicates that Petitioner was released to parole supervision on February 17, 2022. *See New York State Dep’t. of Corrections and Community Supervision Incarcerated Lookup*, <https://nysdoccslookup.doccs.ny.gov/>. Accordingly, Anthony J. Annucci, Acting Commissioner, DOCCS, is substituted as respondent pursuant to Rule 25(c) of the Federal Rules of Civil Procedure. The Clerk of Court shall amend the caption to reflect the substitution.

The Court also notes that Petitioner has not provided the Court with his current mailing address. (*See generally* Dkt.)

Petitioner filed the instant Petition on December 15, 2020. (Pet.) On February 4, 2021, the Court referred his Petition to Magistrate Judge Paul E. Davison. (Order of Reference (Dkt. No. 5).) On March 29, 2021, Respondent filed his Memorandum of Law opposing the Petition. (See Mem. of Law in Opp'n to Pet. (Dkt. No. 11).) On May 4, 2021, Petitioner filed a Traverse. (See Pet'r's Traverse (Dkt. No. 10).)

On December 23, 2022, Judge Davison issued a Report and Recommendation ("R&R") recommending that this Court dismiss the Petition in its entirety as time-barred. (R. & R. 28 (Dkt. No. 11).) Judge Davison provided notice that, pursuant to 28 U.S.C. § 636(b)(1)(C), Rule 72(b) of the Federal Rules of Civil Procedure, and Rule 8(b) of the Rules Governing Section 2254 cases, objections to the R&R were due within 14 days from the receipt of the R&R, or 17 days from the receipt of the same if the R&R was served upon the parties by mail, and that the failure to object or to request extensions of time to file objections within the relevant period of time would constitute a waiver of Petitioner's right to appeal. (*Id.* at 11–12.) Petitioner has not filed any objections. (See generally Dkt.)

When no objections are filed, the Court reviews an R&R on a dispositive motion for clear error. See *Goodall v. Von Blanckensee*, No. 17-CV-3615, 2020 WL 1082565, at *1 (S.D.N.Y. 2020); *Andrews v. LeClaire*, 709 F. Supp. 2d 269, 271 (S.D.N.Y. 2010); *Eisenberg v. New Eng. Motor Freight, Inc.*, 564 F. Supp. 2d 224, 226 (S.D.N.Y. 2008). The Court has reviewed the Petition and R&R, and finding no substantive error, clear or otherwise, adopts the R&R.

Accordingly, it is hereby

ORDERED that the R&R, dated December 23, 2022, is ADOPTED in its entirety.

ORDERED that the Petition is DISMISSED.

ORDERED that because Petitioner has not made a substantial showing of the denial of a constitutional right, a certificate of appealability will not issue, *see* 28 U.S.C. § 2253(c)(2); *Lucidore v. N.Y. State Div. of Parole*, 209 F.3d 107, 111-12 (2d Cir. 2000), and the Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal from this Order would not be taken in good faith. It is further

ORDERED that the Clerk of the Court is respectfully directed to mail a copy of this Order to Petitioner and close this case.

SO ORDERED.

Dated: April 10, 2023
White Plains, New York

A handwritten signature in black ink, appearing to read 'KMK', with a horizontal line drawn underneath the letters.

KENNETH M. KARAS
United States District Judge